

EXHIBIT

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K85AAINRC

Conference

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 IN RE: TERRORIST ATTACK ON
4 SEPTEMBER 11, 2001,

5 03 MD 1570 (SJN)

6 -----x

7 New York, N.Y.
8 August 5, 2020
9 3:00 p.m.

10 Before:

11 HON. SARAH J. NETBURN,

12 Magistrate Judge

13 APPEARANCES

14 APPEARANCES GIVEN ON THE RECORD
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1 MR. CARTER: Sean Carter. Sorry Mr. Maloney and I are
2 stepping over one another.

3 In general, your Honor, at least from our perspective,
4 the process your Honor described, it seems generally workable.
5 I think the one concern would be that in consenting that some
6 processes in which Sudan were permitted to file a motion
7 without there having been an application seeking formal relief
8 for default, we may be inadvertently waiving the protections of
9 the default. And as you probably heard, Sudan has a bit of a
10 history of raising highly technical arguments after ignoring
11 proceedings for quite some time and many of the arguments you
12 just heard from counsel about civil unrest and the like have
13 been presented to other courts which have not found them
14 credible. There's informative discussion about this in the
15 Flanagan decision which is 190 F.Supp F.3d at 138. And so
16 we're mindful of that and we're mindful of proceeding in a way
17 that's quite technical.

18 So, what I would proceed, your Honor, is that Sudan be
19 required to in its motion and a motion it's filing address not
20 only the basis for its motion to dismiss but its arguments for
21 claiming that the defaults do not remain in place and to
22 address why defaults should be lifted if they are still in
23 place in that initial filing so we can respond so that.

24 We would also as a result of that get the benefit of
25 Sudan addressing issues that we think are quite critical about

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1 the willfulness of its failure to appeal and about potential
2 prejudice. And the one thing that we don't want to have happen
3 here is for Sudan to appear for purposes solely of making a
4 technical argument even though it knows that it does not have
5 an intention to participate in discovery should the Court deem
6 that to be the appropriate course and as part of the proffer
7 with regard to why the default shouldn't remain in place that
8 would necessarily require Sudan to confirm that evidence is
9 still available and the witnesses would be made available.

10 So, your Honor, I think it's the same process, just
11 with Sudan also addressing the default issue in whatever motion
12 it filed.

13 THE COURT: Understood.

14 OK. Thank you.

15 MR. MALONEY: Your Honor, just to add to that, I'm
16 glad Mr. Carter covered the points I was going to make. The
17 only one that I wanted to add was Sudan has, its current
18 posture right now is we can move to dismiss all the complaints
19 out there, five after six complaints, and yet, if there is an
20 amended complaint -- that is two too many, I am not sure I
21 follow the logic of that. They can respond to a single motion
22 to five complaints, they can certainly do the two. The Ashton
23 plaintiffs would like to file their own complaint. We would
24 continue to work collectively as the (inaudible) for over 16
25 years and we would have a joint response as we've always done.